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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/720,651	11/24/2003	Christian Eric Schrock	MSFT121825	4659

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EXAMINER	
AUGUSTIN, EVENS J	
ART UNIT	**PAPER NUMBER**
3621	
MAIL DATE	**DELIVERY MODE**
09/20/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/720,651	SCHROCK ET AL.	
	Examiner	Art Unit	
	Evens Augustin	3621	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *24 November 2003*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-37* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-37* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *24 November 2003* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date *01/19/2005*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date: _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

1. Claims 1-37 are pending. Claims 1-37 have been examined.

Claim Interpretation

2. In determining patentability of an invention over the prior art, the USPTO has considered all claimed limitations, and interpreted as broadly as their terms reasonably allow. Additionally, all words in the claims have been considered in judging the patentability of the claims against the prior art.

3. It should also be noted that, in the office action that:

   A. Items in the rejection that are in quotation marks are claimed language/limitations.

   B. Passages in prior art references may be mere rephrasing/rewording of claimed limitations, but the implicit/explicit meaning of the references vis-à-vis the claimed limitation remains intact.

   C. Functional recitation(s) using the word "for" or other functional terms have been considered but given less patentable weight[1] because they fail to add any steps and are thereby regarded as intended use language. To be especially clear, the Examiner has considered all claim limitations. However the A recitation of the intended use of the claimed invention must result in additional steps. See *Bristol-Myers Squibb Co. v. Ben Venue Laboratories, Inc.*, 246 F.3d 1368, 1375-76, 58 USPQ2d 1508, 1513 (Fed.

[1] See *e.g. In re Gulack*, 703 F.2d 1381, 217 USPQ 401, 404 (Fed. Cir. 1983)(stating that although all limitations must be considered, not all limitations are entitled to patentable weight).

Cir. 2001) (Where the language in a method claim states only a purpose and intended result, the expression does not result in a manipulative difference in the steps of the claim.).

D. Limitations that recite the purpose of a process or the intended use of a structure are generally not given any patentable weight. Patentable weight is therefore given to the actual process steps or structural limitations.

E. Word(s) that are separated by "/" are being examined as being synonymous or equivalent.

F. The USPTO interprets claim limitations that contain statement(s) such as "*if, may, might, can, could, when, potentially, possibly*", as optional language (this list of examples is not intended to be exhaustive). As matter of linguistic precision, optional claim elements do not narrow claim limitations, since they can always be omitted *(In re Johnston*, 77 USPQ2d 1788 (Fed. Circ. 2006)). They will be given less patentable weight, because language that suggests or makes optional but does not require steps to be performed or does not limit a claim to a particular structure does not limit the scope of a claim or claim limitation.

G. Independent claims are examined together, since they are not patentable distinct. If applicant expressly states on the record that two or more independent and distinct inventions are claimed in a single application, the Examiner may require the applicant to elect an invention to which the claims will be restricted.

H. Any official notices taken by the USPTO that are not adequately traversed by applicant will be taken to be admitted prior art.

I. The USPTO interprets common computer related words that are not lexicographically defined, in accordance to Computer Dictionary, 3rd Edition, Microsoft Press, Redmond, WA, 1997[2]. The USPTO also uses published patent applications and issued patents as well, for meanings of common computer related words that are not lexicographically defined.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> A person shall be entitled to a patent unless –
>
> (a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States. . . .
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

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[2] Based upon Applicants' disclosure, the art of record, and the knowledge of one of ordinary skill in this art as determined by the factors discussed in MPEP §2141.03 (where practical), the Examiner finds that the *Microsoft Press Computer Dictionary* is an appropriate technical dictionary known to be used by one of ordinary skill in this art. See *e.g. Altiris Inc. v. Symantec Corp.*, 318 F.3d 1363, 1373, 65 USPQ2d 1865, 1872 (Fed. Cir. 2003) where the Federal Circuit used the *Microsoft Press Computer Dictionary* (3d ed.) as "a technical dictionary" to define the term "flag." See also *In re Barr*, 444 F.2d 588, 170 USPQ 330 (CCPA 1971)(noting that its appropriate to use technical dictionaries in order to ascertain the meaning of a term of art) and MPEP §2173.05(a) titled 'New Terminology.'

5. Claims 1-37 are rejected under 35 U.S.C. 102(e) as being anticipated by Drosset et al. (U.S 6662231).

6. As per claims 1-37, Drosset et al. disclose an invention that relates in which a user subscribes to the service and the user's access to audio files is contingent upon authorization and validation. Once authorized, the user may access and stream out audio date files, or similar types of files, to the client device through the communication network. The invention contains the proper hardware (computer readable medium necessarily present)/software combination (col. 3, col.6, ll.1-10), to perform the following:

   A. User selects audio files from a playlist to play (col., 6. 19-33) --**(" selecting a first track referenced by the globally relevant playlist;")**

   B. In response to the selection by the user the server retrieves the Audio ID values from the play list for incorporation in the list reply message 264 to server 80. Server 80 then begins to play the audio files of the play list selected by the user in message 262 by sending an audio query 266 containing the first Audio ID value to database 90, which retrieves the audio data for the Audio ID value and incorporates it into audio reply message 268 to server (col.6, ll.26-34). The aspect of the server retrieving the audio ID to play the play is equivalent to determining whether the file is accessible because if the audio ID was not found, the file would not be playing. The playlist is global because it is accessible through the internet (col.16, ll.1-30)--**(" determining whether the first track is currently accessible to the computing device according to a global track identifier associated with the first track in the globally relevant playlist ")**

C. Server 80 then begins to play the audio files of the play list selected by the user in message 262 by sending an audio query 266 containing the first Audio ID value to database 90, which retrieves the audio data for the Audio ID value and incorporates it into audio reply message 268 to server (col.6, ll.26-34). Implicitly, the audio file would not be played if the Audio ID were not retrieved/accessed--**(" and if, according to the previous determination, the first track is currently accessible to the computing device, playing the first track on the computing device ")**

D. The server streams the song to the user (sever being remote is implied) (col. 6. ll. 34), over the internet or wireless networks via websites (col.16, ll.20, col.14, ll.65-67). The back end component of the system is made up of multiple servers (col.11, ll. 29-38). Since these servers are networked together, a requested audio data file not found in one server would be searched through the entire network of servers --**(" if, according to the previous determination, the first track is not currently accessible to the computing device, determining whether the first track may be obtained from a remote location, and if so: obtaining the first track from the remote location according to the global track identifier; and playing the first track on the computing device.")**

E. Requested audio data file contains audio ID (col.5, ll.42-65). The Audio ID are the MP3ext(format) protocol (col.4, ll.30, 45-46) -- **("obtaining the first track from the remote location according to the global track identifier and a specified track format ")**

F. The user may continue to request play-out of audio files by submitting additional request messages such as request message 222 containing Audio ID value 2, which is processed in a manner similar to the processing of Audio ID file 1 as described above (col.5, ll.59-65) -- **("determining whether any additional tracks are referenced by the globally relevant playlist ")**

G. Client device converts into audio outputs of the user (col.5, ll.54-55) and the ability to download audio files in their entirety (col.15, ll.43-44, col.2, ll.45) -- **("on the computing device, converting the first track to a format compatible with the player device; and downloading the converted first track from the computing device to the player device.")**

H. A user may search for music by song title, album title, and musical style or genre. These choices may be entered by the user as text or may be presented to the user through pull-down menus or icons that the user may click on (col.7, ll.45-48), and artist (col.4, ll.58, col.16, ll.3-5) -- **("the track reference information further includes the identified track's artist and title")**

I. Playlist creator/user identification (col.3, ll.59-67, col.4, ll.1-5)-- **("comprising information identifying the globally relevant playlist's creator ")**

Conclusion

7. *Examiner has pointed out particular references contained in the prior arts of record in the body of this action for the convenience of the applicant. Although the specified citations are representative of the teachings in the art and are applied to the specific limitations within the*

individual claim, other passages and figures may apply as well. It is respectfully requested that if the applicant is preparing to respond, to consider fully the entire references as potentially teaching all or part of the claimed invention, as well as the context of the passage as taught by the prior arts or disclosed by the examiner.

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The USPTO would highly suggest applicant to look into the following application, as they very relevant that claimed invention.

    a. **Dunning et al (US 20030229537)** - The present invention is related to systems, methods, and computer program products for relationship discovery, and more particularly to a system, method, and computer program product of discovering relationships among items such as music tracks, and making recommendations based on user preferences and discovered relationships.

    b. **Qureshey et al. (US 20020002039)** - The present invention relates to the field of audio file transfers and, more particularly, relates to the field of management and distribution of audio files over a computer network such as the Internet

    c. **Swanson (US 20020013784)** - The present invention relates generally to data transmission. More particularly, the invention relates to a system and method for transmitting and playing back audio data

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Evens Augustin whose telephone number is 571-272-6860. The examiner can normally be reached on Monday thru Friday 8 to 5 pm.

10. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Andrew Fischer can be reached on 571-272-6779.

/Evens J. Augustin/
Evens J. Augustin
September 17, 2007
Art Unit 3621